Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States
October Term, 1996

Arthur R. Sorkin,
S. Diane Smith,

Petitioners,

v.

County of Santa Cruz,

Respondent.

Petition for Writ of Certiorari
To The California Court of Appeal,
Sixth Appellate District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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In Propria Persona

Appendix A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

COUNTY OF SANTA CRUZ,

Plaintiff and Respondent,

vs.

ARTHUR R. SORKIN, et al.,

Defendants and Appellants.

H0131179

(Santa Cruz County Sup.Ct.No. 124722)
Filed Apr 23 1996

In a zoning enforcement action, the trial court rendered a judgment in favor of plaintiff County of Santa Cruz that permanently enjoined defendants Arthur R. Sorkin and S. Diane Smith from keeping more than four dogs on their property without a permit. The judgment also imposed civil penalties of $2,500 in favor of plaintiff pursuant to plaintiff's zoning ordinance. On appeal, defendants raise a plethora of issues, but the principal question is whether plaintiff's zoning ordinance requires a permit to keep more than four dogs on defendants' property.

PLAINTIFF'S ZONING ORDINANCE

Defendants own a 14-acre parcel of real property in a district zoned "SU" (Special District). According to defendants trial brief, they purchased the property in 1986, immediately began importing animals to breed and house, and have never denied that they breed dogs on the property. (AA 141, 153) The property houses sheep, geese, and peafowl together with dogs. (AA 153) Defendants' deposition testimony, introduced in evidence, established that approximately 30 dogs over the age of 4 months were on the property at the time plaintiff inspected it in August 1992, and at the time the depositions were taken in October 1993.

An SU district allows land uses that are permitted in any "R-1" zone (residential) or "RA" zone (residential agricultural). Santa Cruz County Code section 13.10.322[1] designates the permitted uses in R1 and RA zones by means of a "Residential Use Chart."

The chart has a subdivision entitled "Animal-related uses." The subdivision identifies five categories of animal-related uses: animal keeping; animal raising; cats and dogs; kennels (5 or more dogs or cats over 4 months old); and stables. The subdivision indicates that animal keeping, animal raising, and four dogs (or cats or combination thereof) are permitted on property zoned RA. It also indicates that a permit is required for maintenance of a kennel on property zoned RA.

The subdivision also states that animal keeping is further subject to section 13.10.643.

Section 13.10.643 pertains to the minimum acreage required when keeping animals in an RA zone. It states that, on a minimum site of one acre, no more than two per acre of horses, cows, hogs, or a combination thereof may be kept; and, on a minimum site of one-half acre, no more than four per acre of sheep, goats, or combination thereof may be kept and no more than one hundred per acre of fowl, rabbits, or similar small animals except mink.[2] It then adds: "On a minimum site of ten acres, the number of animals permitted is not limited, except that no more than six brood sows may be kept on any site."

Defendants contend that section 13.10.643 "authorizes them to have an unlimited number of adult dogs and cats without a permit, since the number of all kinds of animals, except brood sows, is unlimited without permit." At the very least, defendants argue that the ordinance as a whole is ambiguous and rules of construction favor their interpretation. Defendants' analysis is erroneous.

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1 Further unspecified references to "section" are to the Santa Cruz County Code.

2 On a minimum site of one-half acre "beehives" are also permitted.

"The construction and interpretation of a statute are questions of law which we necessarily consider de novo. . . [¶] The fundamental rule of statutory construction is that the court ascertain the intent of the Legislature[3] from an examination of the statute as a whole. [Citations.] We do this in order to be certain that our construction and application of the statute will effectuate the purpose of the law. [Citation.] This process requires that we first look to the plain meaning of the words used and their juxtaposition by the Legislature [citation]; and we are bound to give effect to a statute according to the usual and ordinary import of those words." (County of Los Angeles v. Superior Court (1993) 18 Cal.App.4th 588, 594, fn. omitted.) "[W]here there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858.) To this end, the literal language of an enactment may be disregarded to avoid absurd results and give effect to the manifest purposes which appear from the provisions considered as a whole. (People v. Souza (1993) 15 Cal.App.4th 1646, 1652.) If more than one reasonable construction of the statutory language is nevertheless possible, "then we should look at the legislative history and other extrinsic aids to determine the legislative purpose and adopt the construction which most closely serves it." (County of Los Angeles v. Superior Court, supra, 18 Cal.App.4th at pp. 594595, fn. omitted.)

When these principles are applied to plaintiff's ordinance, it is apparent that the ordinance unambiguously prohibits maintaining more than four dogs on property zoned RA without a kennel permit.

First, the language of section 13.10.322 clearly singles out dogs for special treatment and limits the number of dogs permissible in the RA zone without a permit to four.

And second, the rule of giving effect to all provisions of a statute leads only to a conclusion that the language of section 13.10.322 controls over the language of section 13.10.643. This

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3 The rules of construction used for interpreting statutory enactments apply equally to interpreting ordinances. (See County of Madera v. Superior Court (1974) 39 Cal.App.3d 665, 668.)

follows because the literal language of section 13.10.643 (allowing unlimited dogs on RA property because unlimited animals are allowed) emasculates the dog limitation language of section 13.10.322; on the other hand, the dog limitation language of section 13.10.322 does not negate section 13.10.643 since this latter section is simply read to apply unless its terms or other ordinance provisions (like section 13.10.322) make exceptions.

Since there is no ambiguity in plaintiff's ordinance, there is no need for judicial construction.

EQUAL PROTECTION

Defendants make a constitutional challenge to plaintiff's ordinance as above interpreted. They contend that the ordinance denies them equal protection of the law: "There is no rational basis for singling out dogs and cats for special regulation in a district specifically zoned for agriculture and animal keeping, because any possible reason for regulating dogs and cats would apply equally (or more so) to every other sort of animal, which are not regulated." They seize upon plaintiff's concession below that, under section 13.10.643, they could maintain a "herd of buffalo" on their property. Again, defendants' analysis is erroneous.

A statute is presumed constitutional, and the burden is on the one attacking the statute to negate every conceivable basis which might support it whether the basis has a foundation in the record or not. (Heller v. Doe By Doe (1993) 509 U.S. 312 [113 S.Ct. 2637, 2643].) Stated another way, in the face of an equal protection challenge, a classification must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. (Id. at p. 2642.)

Defendants simply fail in their burden. Dogs and cats are different from buffalo and the like: the former are generally considered to be domestic pets; the latter are generally considered to be farm animals raised for food and fiber. When together in groups, dogs in particular are known to run in packs, attack farm animals, and bark incessantly. In contrast, farm animals tend toward docility. Defendants' arguments, e.g., that dogs can be raised for fiber and farm animals can run in herds, pose danger, and make noise, do not negate that domestic pets

are generally different from farm animals. It is simply not irrational to treat these two types of animals differently. "A classification does not fail rational-basis review because it "'is not made with mathematical nicety or because in practice it results in some inequality."' [Citation.] 'The problems of government are practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific.' [Citations.]" (Heller v. Doe By Doe, supra, 113 S.Ct. at p. 2643.)

DUE PROCESS

Defendants contend that the trial court denied them criminal law due process safeguards (privilege against self-incrimination and guilt proved beyond a reasonable doubt). They point out that plaintiff's zoning ordinance provides that violation of its provisions is a misdemeanor. They reason that the civil nature of the proceedings against them is therefore not controlling.

Defendants did not make this challenge in the trial court. Under orthodox rules of appellate procedure defendants have therefore waived the point for appeal. (See In re Andre P. (1991) 226 Cal.App.3d 1164, 1169-1170 [acknowledging the general rule against considering points on appeal not raised in the trial court, observing that out-of-state authority on application of the general rule to constitutional challenges is split, but electing not to decide the question].)

In any event, we disagree with the authorities cited by defendants for the proposition that a civil zoning enforcement action is sufficiently criminal in nature to trigger criminal due process safeguards.

Defendants principally rely upon In re Winship (1970) 397 U.S. 358, Hicks v. Feiock (1988) 485 U.S. 624, and United States v. Halper (1989) 490 U.S. 435.

The question answered affirmatively in Winship was whether "proof beyond a reasonable doubt is among the 'essentials of due process and fair treatment' required during the adjudicatory stage when a juvenile is charged with an act which could constitute a crime if committed by an adult." (In re Winship, supra, 397 U.S. at p. 359, fn. omitted.) The consequence that a juvenile might lose his or her liberty was the

court's motivation to conclude that a juvenile delinquency proceeding, despite its civil nature, was analogous enough to a criminal proceeding to require constitutional criminal law safeguards. Here, the consequences of having to use land according to lawful zoning ordinances and paying a penalty for violating lawful zoning ordinances are not analogous to a loss of liberty.

The question in Hicks, a habeas corpus proceeding after a father was held in contempt for failure to comply with a child support order, was whether a legislative presumption of ability to pay child support violated due process principles forbidding a court from employing certain presumptions that affect the determination of guilt or innocence in criminal proceedings. The court answered the question affirmatively if the substance of the proceeding and kind of relief afforded could be characterized as criminal in nature (punishing, e.g., unconditional imprisonment or unconditional payment of fine to court) and negatively if the substance and relief could be characterized as civil in nature "remedial, e.g., imprisonment until performance of act, payment of fine to complainant, or payment of fine to court conditional upon performance of act). As we have indicated, the nature of this zoning enforcement proceeding posed no risk that defendants would lose their liberty. And no fine payable to the court was possible or imposed. As such, the proceeding was not criminal in nature requiring criminal due process safeguards.

Halper merely announced the rule that, under double jeopardy principles, a defendant who has already been punished by a criminal conviction cannot be subjected to an additional civil sanction to the extent that the sanction is punishing rather than remedial.

ADMINISTRATIVE REMEDIES

Defendants contend that plaintiff failed to follow its own administrative procedures before filing the complaint and that the failure constitutes a (1) failure to exhaust administrative remedies, or (2) denial of due process of law. There is no merit to this claim.

Defendants rely upon section 13.10.250 which charges plaintiff's zoning administrator with the responsibility for interpretation of the ordinance subject to appeal to the Board of

Supervisors. And they seem to claim that they were entitled to a written interpretation from the zoning administrator that, if adverse, they could appeal administratively.

Defendants' position, however, is based on nothing more than the language of section 13.10.250 providing that the zoning administrator "shall be responsible" for interpretation. That the zoning administrator is responsible for interpreting the zoning ordinance does imply that any particular procedure must be followed to carry out the responsibilities. Defendants cite no other section for the proposition that the zoning administrator must give a written interpretation in a case such as this except section 18.10.230, subdivision (c). But this section operates when a citizen applies for a permit to vary his or her use from uses permitted under the zoning, not when a citizen violates a zoning ordinance. (§ 18.10.110 ["This Chapter establishes procedures for County review and approval of permits for development projects and of changes in planning policies and regulations. The types of permits and approvals which are required are defined in this Chapter. This Chapter also establishes seven levels of standardized processing procedures for the review of permits and policy amendments."].) (AA 288) Defendants also ignore section 13.10.280, subdivision (e), which declares land uses against the ordinance to be nuisances and authorizes the district attorney or county counsel, upon written request of the planning director or order of the planning commission or board of supervisors, to "immediately commence action or proceedings for the abatement, and removal and enjoinment thereof, in the manner provided by law . . . ."

NO CAUSE OF ACTION PROVED

Defendants argue that plaintiff's ordinance cannot properly declare their dog breeding a nuisance per se subject to permanent injunction. They pose that proof of actual nuisance was required. They rely on People v. Cooper (1944) 64 Cal.App.2d Supp. 946, Civil Code section 3482.5, Code of Civil Procedure section 731a, and Civil Code section 3369. Defendants' analyses are erroneous.

In Cooper, the defendant was a veterinarian operating an animal hospital who was criminally charged under a general statute with maintaining or committing a public nuisance. The

statute limited its reach to offenses "the punishment for which is not otherwise prescribed." (People v. Cooper, supra, 64 Cal.App.2d Supp. at p. 948.) A specific statute applied to persons maintaining or committing a public nuisance on their own property after being given reasonable notice to abate by the district attorney or health officer. It was conceded that no notice was given to the defendant, so the court reversed the defendant's conviction. It reasoned that the specific statute controlled and the defendant's omission to abate the nuisance was wherein he offended the law. (Id. at p. 949.) In this context the court stated: "The mere possession of dogs or cats does not create a nuisance per se [sic]. [Citation.] Although appropriate civil remedies might have been resorted to by way of abatement of any such alleged nuisance, the defendant, without being given the opportunity of remedying the claimed evils through notice that they were offensive to his neighbors, found himself under arrest charged with the commission of a crime." (Id. at p. 949.)

Thus, Cooper does not support defendants' proposition: (1) it was a criminal prosecution, not a zoning enforcement action; (2) no zoning statute regulating maintenance of dogs or cats applied; (3) nothing in the case prohibits the state from declaring maintenance of dogs or cats over a certain number to be a nuisance per se (or, at the very least, a violation of a zoning ordinance); and (4) the case in any event recognized that a civil action to abate a nuisance for maintaining dogs could have been properly brought.

Civil Code section 3482.5, subdivision (a)(1), states: "No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began."

Defendants credit their testimony that in 1986 they learned from an employee in plaintiff's planning department that the number of allowed dogs and cats on their property was unlimited. They reason that their dog breeding activity was not a nuisance at the time they began it and it continued for more than three years before plaintiff declared having more than four dogs on RA property a nuisance.

The trial court, however, accepted plaintiff's evidence: Mark Deming testified that section 13.10.642 (regulations for maintenance of kennels) was first enacted in 1966 and amended twice in 1982 and once in 1983. The written ordinance contains notations to that effect. We are bound by the trial court's resolution of the conflicting evidence. (Campbell v. Southern Pacific Co. (1978) 22 Cal.3d 51, 60.)

Code of Civil Procedure section 731a generally prohibits anyone, except the People of the State of California in an action to abate a public nuisance, from- obtaining an injunction against — a business operating as permitted in a commercial zone without evidence of unnecessary and injurious methods of operation. Defendants reason that plaintiff is a person, not the People, and therefore could not prevail on a per se nuisance theory.

This claim is patently without merit. A county is a body politic whose powers are exercised as a department of the state exercising powers belonging to the state with the authority of the state. (County of Sierra v. Butler (1902) 136 Cal. 547, 550-551 [action to enjoin obstruction of highway properly brought in name of county].) And the state has specifically given counties the authority to abate nuisances. (Gov. Code, § 25845, subd. (a) ["The board of supervisors, by ordinance, may establish a procedure for the abatement of a nuisance . . . ."]; see also Gov. Code, § 38771 [giving cities same authority].)

Civil Code section 3369 prohibits injunctive relief against violation of a penal law unless violation of the law constitutes a nuisance. Defendants claim that since violation of plaintiff's zoning ordinance is a crime (misdemeanor) plaintiff is required to prove that their violation constituted a nuisance.

Defendants are incorrect. "When use of a parcel violates applicable zoning rules, the responsible agency may obtain abatement -- i.e., removal of the violation and restoration of legal use -- even when substantial expense is involved." (IT Corp. v. Solano County Bd. of Supervisors (1991) 1 Cal. 4th 81, 89; see also City of Stockton v. Frisbie & Latta (1928) 93 Cal.App. 277, 289 ["it is thoroughly established that a municipal corporation or a county or a township may, in certain instances, by direct action on its part, invoke an appropriate civil remedy to coerce obedience to the mandates of its ordinances or regulations adopted in the exercise of the police power as

expressly granted to it by the constitution"].)

CAPACITY TO SUE

Defendants contend that plaintiff lacked capacity to sue because there was no evidence showing that the board of supervisors, planning director, or planning commission approved bringing suit as required by section 13.10.280, subdivision (e).

Defendants' contention is more properly one attacking the county counsel's lack of authority, not plaintiff's lack of capacity. (Pillsbury v. Karmgard (1994) 22 Cal.App.4th 743, 757 [lack of capacity is a disability, like infancy or insanity, that deprives a party of the right to come into court].)

The claim has no merit in any event since defendants failed to raise the issue below.

A claim of lack of attorney-authority is an affirmative defense for which the party attacking counsel's authority has the burden of proof. (Corcoran v. Arouh (1994) 24 Cal.App.4th 310, 316 ["absent evidence of lack of authority, an ostensible agency may be found to exist when counsel makes an appearance for and purports to act on behalf of a litigant"].) The defect is waived if not pleaded and proved in the trial court. (Cf. Danziger v. Peebler (1948) 88 Cal.App.2d 307, 311 [challenge to bankruptcy trustee's authority to sue waived by failure to raise issue at trial]; Rosenbloom v. Southern Pac. Co. (1922) 59 Cal.App. 102, 104 [complaint failed to show wife's authority to sue for death of child (erroneously described as lack of capacity); defect waived by failure to demur].) In both of the cases relied upon by defendants the issue was raised and litigated in the trial court. (Ventura County v. Clay (1897) 119 Cal. 213 [dismissal granted for lack of authority]; Contra Costa v. Soto (1902) 138 Cal. 57 [non-quit granted for lack of authority].)

STATUTE OF LIMITATIONS

Plaintiff's complaint was filed in 1993. Defendants contend that a four-year statute of limitations applies to actions brought by a county (Code Civ. Proc., § 345) and that some of the events sued upon occurred before 1989.

There is no merit to any statute of limitations issue. Defendants admitted in their deposition testimony that they presently maintained approximately 30 dogs on their property. This evidence supports an inference that defendants' zoning violation was a continuing nuisance. "Every repetition of a continuing nuisance is a separate wrong for which the person injured may bring successive actions for damages and injunctive relief until the nuisance is abated, even though an action based on the original wrong may be barred by the statute of limitations." (Wade v. Campbell (1962) 200 Cal.App.2d 54, 61.)

DOUBLE JEOPARDY

Defendants claim that criminal law principles of double jeopardy require reversal of the judgment. They base their argument upon that plaintiff placed a lien upon their property in 1990 for the very violations sued upon herein. Defendants failed to raise double jeopardy as an affirmative defense and have therefore waived this issue for appeal. (People v. Franklin (1976) 56 Cal.App.3d 18, 23.)

EVIDENTIARY RULINGS

Defendants first claim that the trial court failed to ruled on their motion in limine seeking to limit admission of certain evidence. They admit, however, that their counsel agreed with the trial court to take up the issues via motions to strike. They continue that the trial court ruled in their favor at trial to exclude evidence of "an inspection warrant that was improperly executed by force." Their challenge is apparently to "admissibility of evidence taken from other illegal searches." They cite no portion of the record, however, where they made any motion to strike such evidence. We therefore deem the matter waived. (Haynes v. Gwynn (1967) 248 Cal.App.2d 149, 151.)

Defendants also argue that the trial court erroneously admitted their deposition testimony over objection[4]. They

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[4] Because violating plaintiff's zoning ordinance is a misdemeanor, defendants refused to testify at trial about the number of dogs they housed. They asserted their Fifth Amendment privilege against self-incrimination; however, they

maintain that their deposition testimony was involuntary because (1) plaintiff "should not have been allowed to depose" them, (2) plaintiff's counsel told them at the deposition that all objections were reserved for trial, and (3) their attorney believed that "all objections [to deposition questions] were reserved for trial." There is no merit to these claims.

First, defendants failed to take measures to prevent their depositions. Second, defendants fail to cite any portion of the record supporting their statement that plaintiff's counsel told them that their objections were reserved for trial. And third, defendants fail to cite any authority for the proposition that their counsel's erroneous view about the necessity to assert privilege objections at depositions renders their deposition testimony involuntary for the purposes of excluding it at a zoning enforcement trial.

Defendants also contend that the trial court erroneously excluded their proffered evidence tending to show that their zoning violation was not an actual nuisance. The ruling was patently correct since the evidence was irrelevant. As we previously pointed out, plaintiff was entitled to an injunction simply by force of the violation of its zoning ordinance. (IT

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had not claimed this privilege at their deposition.

"The protection of information from discovery on the ground that it is privileged . . . is waived unless a specific objection to its disclosure is timely made during the deposition." (Code Civ. Proc., § 2025, subd. (m)(1).) And the deposition of a party may be used against that party at trial of the action. (Code Civ. Proc., § 2025, subd. (u)(2).)

Defendants cite People v. Lawrence (1959) 168 Cal.App.2d 510, for the proposition that they can object to prior testimony on Fifth Amendment grounds. Lawrence is inapposite. In that case, a witness testified substantively on voir dire but invoked the Fifth Amendment when called as a trial witness by the defendant. The court found no waiver of the privilege because existing authority established that a witness testifying at a preliminary examination or before a grand jury (proceedings analogous to voir dire) did not waive the privilege against self incrimination for a subsequent trial. Here, existing authority establishes that failure to assert the privilege at a deposition is a waiver.

Corp. v. Solano County Bd. of Supervisors, supra, 1 Cal.4th at p. 89.)

Defendants next claim that the trial court erroneously excluded their proffered evidence of a "booklet published and distributed by the United States Department of Agriculture." According to defendants, the evidence would have tended to show that raising dogs is an agricultural use which would in turn have supported their claim that raising dogs constituted animal keeping within the meaning of plaintiff's ordinance.

Defendants sought to introduce this evidence via a request to take judicial notice of the publication. They claim that judicial notice was mandatory under Evidence Code sections 453 (judicial notice of matters specified in section 452 mandatory upon request) and 452, subdivision (c). We disagree.

Evidence Code section 452, subdivision (c), provides for judicial notice of "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." A U.S.D.A. booklet is by no means an "official act" of the Department of Agriculture.

STATEMENT OF DECISION

Defendants contend that the trial court's statement of decision is deficient because it fails to state facts supporting the conclusion reached. There is no merit to this contention.

The only material disputed fact in this case was whether defendants housed more than four dogs on their property, i.e., operated a kennel without a permit. The amended statement of decision states that defendants indeed had more than four dogs and therefore operated a kennel without a permit. Moreover, it also cites the supporting evidence, i.e., defendants' deposition admissions.

AFFIRMATIVE RELIEF

Defendants complain that the trial court erred by failing to grant them affirmative relief and expunge the lien placed on their property by plaintiff. We fail to see any error. The effect of the judgment is to affirm the validity of the lien. Defendants are entitled to expungement of the lien only upon satisfactory proof

that their zoning violation has been corrected. (§ 13.10.288.)

COSTS

After entry of judgment the trial court denied defendants' motion to tax costs and awarded plaintiff $3,702.13. Defendants challenge the order but they filed no appeal from it. The order denying defendants' motion is clearly an order made after judgment that must be separately appealed. (Code Civ. Proc., § 904.1, subd. (a)(2); Rappenecker v. Sea-Land Service. Inc. (1979) 93 Cal.App.3d 256, 261.)

JUDICIAL DISQUALIFICATION

Defendants contend that the trial court had an undisclosed possible conflict of interest and appearance of bias mandating reversal. They cite matters outside the record: after the trial, but before issuance of the statement of decision and judgment, the trial judge lost a contested election for his seat; before taking his seat the judge had been employed by the district attorney; and plaintiff, as the one who had been tendering the judge his paychecks, was the judge's employer.

Defendants pose that a reasonable man would entertain doubts about the judge's impartiality. This follows, so the argument goes, because the judge undoubtedly desired job references from plaintiff, the district attorney, or both and would therefore be motivated to find in plaintiff's favor.

We reject defendants' contention at the threshold because it is based on matters outside the record. (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 250, p. 256.) Although defendants mention in passing that we could take judicial notice of the matters, they never made a formal request that we do so. (Evid. Code, § 459.)

DISPOSITION

The judgment is affirmed.

/s/ Premo, Acting P.J.

WE CONCUR:

/s/ Elia, J.

/s/ Wunderlich, J.

Appendix B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

COUNTY OF SANTA CRUZ,
a Political Subdivision of
the State of California,

Plaintiff,

vs.

No. 124722
AMENDMENT TO
STATEMENT OF
DECISION

ARTHUR R SORKIN, DIANE S. SMITH, etc.,

Defendants.

The above matter came on for court trial on March 16, 1994 in Department 11 of the above entitled court. Harry Oberhelman, Assistant County Counsel appeared for plaintiff; John Perkins appeared on behalf of defendants.

Defendants property consists of approximately 14 acres and it is located in a Special Use (SU) zone. In a SU district the permitted uses are those that would be permicted in any Residendial Agricultural (RA), or Residential (R-1) Zone District. The zoning restrictions for the R-1 Zone District prohibit entirely the keeping of more than four dogs or cats, or combination thereof, and, without a Level V permit, kennels for five or more dogs or cats over the age or four months.

A kennel is defined in Santa Cruz County Code Section 13.10.700 (k) as follows:

> "Any lot, building structure, enclosure or premises whereupon or wherein are kept five or more dogs, cats, or similar small animals over the age of four months in any combination for more than five days, whether such keeping is for pleasure, profit, breeding, or exhibiting and including places where dogs or cats or similar small animals in any combination are boarded, kept for sale or kept for hire."

It is undisputed the defendants have no Level V development permit for the maintenance of a kernel.

Plaintiff seeks a permanent injunction alleging that the defendants keep more than five dogs on their property and operate a kennel thereon. Plaintiff also seeks civil penalties. Defendants defend on a number of grounds. First, defendants argue that under the County Code their specific use of the property is permissible without a permit Second, they challenge the County's zoning regulations on equal protection grounds Third, defendants claim estoppel and laches. Fourth, they challenge the Inspection Warrant and evidence obtained therefrom on several bases (1) that it was obtained without reasonable or probable cause; and (2) that it was improperly executed. Defendants also raise the constitutionality of a recorded Notice of Violation and they complain that the plaintiff failed to first institute abatement proceedings under the County Code.

Under Santa Cruz County Code §1.12.050, abatement proceedings for a public nuisance are discretionary on the part of the County and not a mandatory prerequisite to a claim for injunctive relief.

The Court addresses the Inspection Warrant next because the ruling on that affects the state of the evidence. The Court finds the warrant was based on reasonable or probable cause. However, the Court also finds the execution of the warrant in violation of Civil Code of Procedure Section 1822.56 in that there was a threat of the use of force in the service of the warrant, Pursuant to the case of People v. Tillery (1989) 211 CA3d 1569, 1581, the Court further finds the evidence resulting from the warrant should be excluded because the interests and policies underlying the statutory scheme of the administrative warrant would otherwise be frustrated. The statutory intent to avoid violent confrontations was significantly jeopardized by the threat of forcible entry. The mere fact the confrontation did not occur here does not require a different result. Statutory policies are compromised to a similar degree whether force is actually utilized or just threatened, warranting exclusion in either case.

In the absence of that evidence, the Court still fings that defendants had more than four dogs on their property and that they operated a kennel as defined under the County Code. The admitted portions of their deposition testimonies as well as their statements during the trial sufficiently establish these findings.

Turning to the defendants' contention that their activities constitute a permitted use under the zoning regulations applicable to the SU zone district, the Court disagrees.

The allowed uses in RA and R-1 zones are set forth in Santa Cruz County Code Section 13.10.322. One specifically permitted use is animal keeping, subject to Section 13.10.643. Another permitted use is animal raising, family, subject to Section 13.10.644. A third permitted use is the keeping of four cats or dogs without a permit, or, with a permit and subject to Section 13.10.642, the maintenance of a kennel for five or more dogs or cats over the age, of four months.

Defendants contend that their dog breeding operation is specifically permitted under Santa Cruz County Code Section 13.10.643, which permits keeping an unlimited number of animals on a lot exceeding ten (10) acres. Defendants' reason that the classifications of "cats and dogs " and "kennels" although listed separately in the Residential Uses Chart must necessarily be included within either or both "small scale commercial agricultural", and "animal keeping"; thereby becoming themselves subject to Section 13.10.643 and allowed without a permit because defendants' parcel is larger than ten (10) acres.

Defendants' argument is unpersuasive. It contradicts the clear statutory scheme which in the Residential Uses Chart segregates and delineates the treatment of these various uses. Additionally, many of the categories are specifically made subject to another section. There is no such reference with respect to "cats and dogs " but kennels for five or more dogs or cats over the age of four months are subject to Section 13.10.642. Notably there is no mention of Section 13.10.643 as in the case of animal keeping. In view of this omission and the specific listing of " cats and dogs " and "kennels" the reasonable statutory construction and interpretation is that these categories are a limitation on the other provisions allowing the keeping of animals rather than subsumed into those other categories and within their interpretation and application.

Defendants further challenge the County's zoning regulation on equal protection grounds. They argue that the County's regulations of dogs in the RA Zone District is infirm because the different treatment accorded this classification of animal from other types of animals is arbitrary, capricious or irrational. The Court disagrees.

All that is required in this situation not involving a fundamental right or suspect classification is a rational basis for the different treatment among the various animals. The burden is on the defendants to demonstrate that a zoning classification is arbitrary. They have failed to do this. Moreover, if the classification is fairly debatable the regulation must be upheld. Horlinger v. Hahn (1992) 120 L.Ed. 2nd 1.

The Supreme Court recently set out the equal protection analysis required under the rational relationship test in Heller v. Doe (1993) 113 S.Ct. 2637, 2642-1643:

> We many times have said, and but weeks ago repeated, that rational- basis review in equal protection analysis "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices," Nor does it authorize "the judiciary [to] sic as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines," For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. Such classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. Further, a legislature that creates these categories need not "actually articulate at any time the purpose or rationale supporting its classification." Instead, a classification "must be upheld against equal protection" challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."
>
> A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. [A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data," A statute is presumed constitutional, and "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it," whether or not the basis has a foundation in the record, Finally, courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between

> means and ends. A classification does not fail rational-basis review because it " 'is not made with mathematical nicety or because in practice it results in some inequality.' " "The problems of government are practical ones and may justify, if they do not require, rough accommodations--illogical, it may be, and unscientific." , . True, even the standard of rationality as we so often have defined it must find some footing in the realities of the subject addressed by the legislation.

Dogs and cats are distinguishable from the other types of animals in that they are almost exclusively considered to be domesticated pets whereas most of the other animals are principally involved in the production of food and fiber. Because of their clear domesticated status issues such as noise and excrement are arguably different, Moreover, especially with respect to dogs, there is a propensity to run in packs and attack farm animals which is particularly important considering multiple livestock and fowl keeping is allowed in the same zone district. Dogs in greater numbers, especially in close contact as in a kennel, could compound the noise factor, Lastly, but not completely, the operation of a kennel could impact the neighborhood with increased traffic in the area.

Under the standard as explicitly defined in the Heller case and in light of the burden of proof on the issue, the Court finds the Santa Cruz County Code does not run afoul of the equal protection clause as it relates to dogs and kennels.

Defendants allege as an affirmative defense that the County is estopped to seek enforcement of its zoning ordinance. The claim of estoppel is based on the alleged conversation that defendant Sorkin had with an unidentified Planning Department employee wherein he was told before he purchased the property that there was no limit on the number of animals including dogs. Defendants bear the burden of proof on the estoppel defense. Additionally, estoppel will not be applied when to do so would nullify a strong rule of policy adopted for the benefit of the public. Anza Parking Corp. v. City of Burlingame (1987) 195 CA3d 855, 861. On the basis of these rules and the case of Pettit v. City of Fresno 34 CA3d 813, the Court finds the plaintiff is not estopped to seek enforcement of the applicable zoning ordinance.

Lastly, defendants contend the Notice of Violation

recorded on January 19, 1990 should be expunged. Plaintiff argues defendants are not entitled to this type of relief under their pleadings. The Court finds such relief could be granted if warranted under the defendants' Answer and Prayer for such other and further relief as the court may deem just and proper. However, in ruling in favor of plaintiff on the preliminary injunction, it is not necessary to rule on the validity of the Notice of Violation. Defendants have now had their full hearing on these issues. Upon satisfactory proof of compliance with this ruling defendants have codified procedures available to them to expunge the Notice of Violation (§13.10.288).

The Court finds that the keeping of dogs greater in number of four on the subject property and the maintenance of a kennel without a Level V development permit from the County of Santa Cruz constitutes a public nuisance. The Court grants a permanent injunction enjoining defendants and each of them as well as their agents, servants and all persons acting under or in concert with or for them, from operating a kennel and from keeping dogs in numbers exceeding four on the subject property unless or until all development permits required under the Santa Cruz County Code have been obtained. Civil penalties are imposed pursuant to County Code Section 1.12 .070 (a) in the amount of $2,500 and plaintiff is awarded costs of suit.

DATED 7/28/94

/s/ GEORGE J. KOVACEVICH
Judge of the Superior Court

Appendix C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

COUNTY OF SANTA CRUZ,
a Political Subdivision of
the State of California,

Plaintiff,

vs.

No. 124722
JUDGMENT AFTER
TRIAL BY COURT
Filed Aug 4 1994

ARTHUR R SORKIN, DIANE S.
SMITH, and DOES 1 THROUGH 20,
inclusive,

Defendants.

The above case came on for court trial on March 16, 17, 21, 22 land 23, 1994, before the Honorable George J. Kovacevich. Harry Oberhelman, Assistant County Counsel, appeared on behalf of Plaintiff and John S. Perkins, House, House & Perkins appeared on behalf of Defendants.

The Court having heard and considered the testimony and documentary evidence and the argument of counsel, the matter having been submitted for decision and the Court having issued its Statement of Decision, the Court grants judgment for Plaintiff and against Defendants as follows:

1. Defendants, and each of them, as well as their servants, agents and all persons acting under or in concert with or for them, are permanently enjoined from keeping dogs in numbers exceeding four on that real property identified as 12340 Indian Trail Road, Santa Cruz County, California, APN: 088-201-13 unless and until all necessary permits required under the Santa Cruz County Code have been obtained.

2. Defendants, and each of them, as well as their servants, agents and all persons acting under or in concert with or for

them, are permanently enjoined from operating a kennel, on that real property identified as 12340 Indian Trail Road, Santa Cruz County, California, APN: 088-201-13,- unless -and until all necessary permits required under Santa Cruz County Code have been obtained. Kennel is defined to be the use of any lot, building structure, enclosure or premises whereupon or wherein there are kept five or more dogs, cats or similar small animals over the age of four months in any combination for more than five days, whether such keeping is for pleasure, profit, breeding, or exhibiting and including places where dogs or cats or similar small animals in any combination are boarded, kept for sale or kept for hire.

3. Defendants pay to the Plaintiff the sum of $2,500 civil penalties.

4. Plaintiff is awarded its costs of suit.

Dated: 7/29/94

GEORGE J. KOVACEVICH
Judge of the Superior Court

Appendix D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

COUNTY OF SANTA CRUZ,
a Political Subdivision of
the State of California,

Plaintiff and Respondent,

vs.

No. H013179

Superior Ct. No. 124722
Filed May 15 1996

ARTHUR R SORKIN, DIANE S. SMITH, and DOES 1 THROUGH 20, inclusive,

Defendants and Appellants.

BY THE COURT*

The appellants' petition for rehearing is denied.

Dated May 15 1996

/s/ Premo, J.
Acting P.J.

* Before Premo, Acting P.J., Elia J., and Wunderlich, J.

Appendix E

Sixth Appellate District No. H013179
S053973

IN THE SUPREME COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ, Respondent

vs.

Filed Jul 10 1996

ARTHUR R SORKIN, et al., Appellants

Appellants' petition for review is DENIED.

/s/ George
Chief Justice

Appendix F

CALIFORNIA STATUTES

CIV §3491. Remedies

The remedies against a public nuisance are:

1. Indictment or information;

2. A civil action; or,

3. Abatement.

CIV §3492.

Remedy by Indictment or Information

The remedy by indictment or information is regulated by the Penal Code.

GOV §25132.

(a) Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction. Such a violation may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars ($100) for a first violation; (2) a fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year.

PEN §373a.

Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of anotherwhomaintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney or city attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be

deemed a separate and distinct offense, and it is hereby made the duty of the district attorney, or the city attorney of any city the charter of which imposes duty upon the city attorney to prosecute state misdemeanors, to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated and removed.

PEN §836.5.

(a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his presence which is a violation of a statute or ordinance which the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and nocause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his authority for false arrest or false imprisonment arising out of any arrest which is lawful or which the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No such officer or employee shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

(c) In any case in which a person is arrested pursuant to subdivision (a) and the person arrested does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his promise to appear, as prescribed by Chapter 5C (commencing with Section 853.6). The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a written notice to appear pursuant to this authority.

(d) The governing body of a local agency, by ordinance, may authorize its officers and employees who have the duty to enforce a statute or ordinance to arrest persons for violations of such statute or ordinance as provided in subdivision (a).

(e) For the purpose of this section, "ordinance", includes an order, rule, or regulation of any air pollution control district.

(f) For purposes of this section, a "public officer or employee" includes an officer or employee of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency.

PEN §853.6.

(a) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or superior shall prepare a written notice to appear in a court.

In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer,

or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail which in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation which is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency.

If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or

offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the

charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services. [Am 1993, c 589, c 995]

Appendix G

SANTA CRUZ COUNTY CODE

SANTA CRUZ COUNTY CODE, CHAPTER 1.12

GENERAL PENALTY AND ENFORCEMENT

1.12.010 Code violations deemed misdemeanors—Continuing violations.

It is unlawful, and constitutes misdemeanor, for any person to violate, or to fail to comply with, any provision of the Santa Cruz County Code unless otherwise specified. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this code is committed, continued or permitted. (Prior code § 1.08.010: Ord.1532, 7/21/70)

1.12.020 Infractions—Violation of administrative provisions.

Acts denominated infractions shall not be deemed to be misdemeanors. Administrative provisions appearing in Chapter 1.16, Title 2, Title 3, Chapters 4.28 through 4.48 and Chapter 7.56 of the Santa Cruz County Code shall not be deemed to be criminal offenses unless specifically denominated infractions or misdemeanors. (Prior code § 1.08.020: Ord. 1532, 7/21/70)

1.12.030 Penalty for misdemeanors.

Any person convicted of a misdemeanor, the penalty for which is not otherwise prescribed, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. (Ord.3620 § 1,1986: Ord. 3602 § 1, 1985: prior code § 1.08.030: Ord. IS32, 7/21/70)

1.12.040 Penalty for infractions.

A. Acts denominated infractions shall not be punishable by imprisonment. Every violation determined to be an infraction is punishable by:

1. A fine not exceeding one hundred dollars for a first violation;

2. A fine not exceeding two hundred dollars for a second

violation of the same provision of the County Code within one year,

3. A fine not exceeding five hundred dollars for each additional violation of the same provision of the County Code within one year.

B. A person charged with an infraction shall not be entitled to a trial by jury. A judgment that a person convicted of an infraction be punished by fine may also provide for the payment to be made within a specified time or in specified installments, contingent upon the person giving his written promise to either pay the fine as provided or to appear in court on the due date. Any person who willfully violates any such written promise is guilty of a misdemeanor. (Ord. 3517 § 1, 1984: prior code § 1.08.040: Ord. 1532, 7/21/70; Ord. 2685, 5/22/79)

1.12.050 Violations deemed public nuisance-Abatement

A. Any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be abated as such by the county in accordance with this code and state law.

B. In addition to the penalties herein provided, upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with this code except for conditions abated pursuant to Section 17980 of the Health and Safety Code, the court may order the owner to pay treble the costs of abatement. (Ord. 4070 § 1, 1990: prior code § 1.08.050: Ord. 1532, 7/21/70)

1.12.060 Violations—Effect on permit issuance.

Applications for permits pursuant to provisions of the Santa Cruz County Code may be denied or conditionally approved if related violations of the Santa Cruz County Code or state law are found to exist. (Prior code § 1.08.070: Ord. 2366, 11/30/76)

1.12.070 Code violations-Civil penalties.

A. Any person who violates or fails to comply with any provision of the Santa Cruz County Code shall be liable for a civil penalty not to exceed two thousand five hundred dollars for

each violation or failure to comply. It shall be a separate offense for each and every day during any portion of which any person knowingly and intentionally commits, continues or permits a violation of any provision of the Santa Cruz County Code.

B. Any person who constructs or converts a structure for human habitation without a building or development permit required by any provision of the Santa Cruz County Code shall be liable for a civil penalty in the amount of any rent received from any person occupying the illegal structure, or, in the alternative, in the amount of the reasonable rental value of the structure from the date of its construction or conversion.

C. The county counsel, upon obtaining authorization from the board of supervisors of the county, may prepare and file a civil action on behalf of the county in any court of competent jurisdiction to recover the civil penalties provided by this section. Any penalties recovered by the county counsel under subsection B in excess of the total county costs of enforcement shall be deposited in the county's affordable housing fund. All other penalties recovered by the county counsel under this section in excess of the total county costs of enforcement shall be deposited in the county's general fund.

D. The remedies and civil penalties provided by this section shall be in addition to any other remedies and penalties provided by law. (Ord. 4110 § 1 (part), 1991; Ord. 3991 § 1, 1989: Ord. 3951 § 1, 1988)A

ORDINANCE NO. 4290

ORDINANCE AMENDING SECTION 1.12.070 OF THE SANTA CRUZ COUNTY CODE RELATING TO COUNTY CODE ENFORCEMENT

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Subsection D. of Section 1.12.070 of the Santa Cruz County Code is hereby amended to read:

D. The Board of Supervisors may provide one or more hearing officers to conduct hearings, to issue subpoenas, to receive evidence, to administer oaths, to rule on questions of law and the admissibility of evidence, to prepare a record of the proceedings, to issue enforcement orders with regard to violations of the County Code or of specified chapters of the County Code, and to provide for the recovery of enforcement costs, any civil penalties, and any other costs of abatement as a special assessment against the property on which the violation(s) occurred or as a personal obligation of the person committing or permitting the violation(s). Written notice of the time, date, and location of the hearing shall be given by personal service or certified mail to the person or persons alleged to have violated the County Code, and to any other person known to own or possess the property, at least fifteen days prior to the date of the hearing. The notice shall also state the County Code provisoes alleged to have been violated; a description of the property on which the alleged violation has occurred, including the parcel number used by the Assessor on the current roll; the name and address, if known, of the person alleged to have committed or permitted the violation(s) and of the property owner and other person, if any, in possession of the property; the estimated costs of enforcement, other abatement costs, and civil penalties proposed to be made a special assessment against the property and collected on the tax roll or to be collected as a personal obligation; and the name, address, and telephone number of the department or agency issuing the notice to which protests, or objections, or other communications may be directed. The hearing officer may continue the hearing determined appropriate by the hearing officer. In conducting the hearing, the hearing officer shall give weight to the administrative

interpretation of an ordinance provision by the department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized. At the conclusion of the hearing held on the alleged violation(s), the hearing officer shall have the authority to render a decision, supported by written findings, which:

1. Determines whether the alleged violation(s) of the County Code have been committed or permitted by the person given notice;

2. Orders the payment of the total amount of the County's enforcement costs and other abatement costs by any such person found to have committed or permitted the violations;

3. Orders the payment of civil penalties to be paid by any such person found to have committed or permitted the violations;

4. Orders action to be taken to correct any violations by any such person found to have committed or permitted the violations.

5. Determines whether any enforcement costs, other abatement costs, and civil penalties are to be made a special assessment against the property on which the violation(s) occurred and collected on the secured tax roll, or are to be the personal obligation of the person committing or permitting the violation and collected on the unsecured tax roll.

SECTION II

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this 1st day of February, 1994, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS Beautz, Symons, Belgard, Keeley and Patton
NOES:. SUPERVISORS None
ABSENT: SUPERVISORS None

SANTA CRUZ COUNTY CODE, CHAPTER 6.08

LICENSING

6.08.010 Dog licensing requirements—Term of license.

A. Dogs shall be licensed within thirty days of obtaining the age of four months, or within thirty days of acquisition by the owner, whichever occurs later.

B. Licenses shall be valid for twelve months from date of issuance and shall be issued upon payment of the fee set by resolution of the board of supervisors.

C. Licenses issued under prior existing county ordinances shall remain valid until expiration.

D. No license shall be issued unless proof of antirabies vaccination is presented and is valid for the license period.

E. A license may be sold for less than the full twelve-month license period if the antirabies vaccination expires prior to the full license period. Fees for partialterm licenses will be pro-rated on a monthly basis, with a minimum fee of five dollars to cover administrative costs. (Ord. 3675 § 2, 1985: prior code § 8.05.300: Ord. 540,12/10/57; Ord.1220, 12/20/66; Ord.2170,8/19/75; Ord.2259, 3/16/76)

6.08.020 Vaccination—Requirements.

Every owner of any dog over the age of four months within the limits of Santa Cruz County shall, at intervals specified by the California State Department of Health Services, procure the vaccination of the dog by a licensed veterinarian with an approved canine antirabies vaccine. (Ord. 3675 § 4, 1985: prior code § 8.05.310: Ord. 1220, 12/20/66; Ord. 2170, 8/19/75; Ord.2259, 3/16/76)

SANTA CRUZ COUNTY CODE, CHAPTER 6.12

6.12.010 Dogs at large prohibited. Exceptions.

It is unlawful for the owner of any dog, whether licensed or unlicensed, to permit or allow such dog to be at large anywhere in the unincorporated area of Santa Cruz County. The provisions of this section shall not apply to:

A. A dog at large on any ranch or similar undeveloped property with permission of the property owner, and

B. A dog entered in a dog show or field trials, and under the reasonable control of a competent person. (Ord. 3728 § 19, 1986: prior code § 8.05.400: Ord. 2170, 8/19/75)

6.12.020 Leash required for dogs off premises.

It is unlawful for the owner of any dog, whether licensed or unlicensed, to permit or allow such dog to be away from the premises of its owner at any time if not securely restrained by a leash. (Ord.3728 § 20, 1986: prior code § 8.05.401: Ord. 1371,10/29/68; Ord.1447, 7/25/72; Ord. 2170, 8/19/75)

6.12.080 Animal defecation prohibited where.

It is unlawful for the owner of any animal to allow or permit such animal to defecate on any public property or improved private property, other than that of the owner. (Prior code § 8.05.420: Ord. 2170, 8/19/75)

6.12.090 Noisy animals.

A. It is unlawful for any person to keep or harbor any dog, cat or other animal, whether licensed or not, which by habitual howling, yelping, barking or other noise unreasonably disturbs or annoys any person with ordinary sensitivities. When determining if there has been a violation of this section, the use and character of the property where the animal is located as well as the neighboring properties shall be taken into consideration.

B. Notwithstanding any other provisions of this section, commercial agricultural activities, operations or facilities shall be exempt from the provisions of this section to the extent provided by Section 3482.5 of the California Civil Code. (Ord. 3979 § 1,

1989: prior code § 8.05.460: Ord. 540, 12/10/57 Ord. 2170, 8/19/75)

6.12.100 Harassment, threat or injury by dogs.

It is unlawful for the owner of any dog to suffer or permit the same to annoy and harass, chase, threaten to inflict, or inflict injury of any kind on any person. (Prior code § 8.05.410: Ord. 2170, 8/19/75)

6.12.110 Dogs killing domesticated animals or other dogs.

It is unlawful for the owner of any dog or other domesticated animal to suffer or permit the same to cause the death of another dog or other domesticated animal, except where the offending animal is acting in self-defense, or where the incident occurs on the property of the owner of the offending animal. The poundmaster may impound any dog or domesticated animal found at large in violation of this section, and the poundmaster may declare the dog or domesticated animal to be a vicious animal and proceed under the procedure set forth in Section 6.24.070 of the Santa Cruz County Code. (Prior code § 8.05.412: Ord. 3060, 4/14/81)

6.12.130 Livestock or wild game— Threat or injury by dogs prohibited.

It is unlawful for the owner of any dog to suffer or permit the same, under any circumstances, to chase, threaten to inflict, or inflict injury of any kind on any wild game, as defined in Fish and Game Code Section 3950, or on any domestic livestock, including cows, sheep, horses and chickens. (Prior code § 8.05.415: Ord. 2170, 8/19/75)

6.12.140 Vicious animals.

It is unlawful to permit any vicious animal to go unrestrained. Any vicious animal may be required by written order of the poundmaster to be confined to its owner's premises, and allowed at liberty only under the direct control of its owner while on a leash and properly muzzled to prevent harm or injury to the public. (Prior code § 8.05.430: Ord. 2170, 8/19/75

SANTA CRUZ COUNTY CODE, CHAPTER 6.16

KENNELS AND PET SHOPS

6.16.010 Definitions.

A. "Kennel" means any person, firm or corporation engaged in the commercial business of breeding, buying, selling or boarding of dogs and cats. Any person, firm or corporation who shall keep upon its premises more than two female dogs or more than one female cat for breeding purposes shall be considered as operating a kennel.

B. "Pet shop" means any person, firm or corporation operating an establishment where live animals and/or birds are kept for sale as domestic pets. (Prior code § 11.44.010: Ord. 540, 12/10/57)

6.16.020 Permit—Required.

No person shall operate any kennel or pet shop as defined in this chapter without first obtaining a permit from the health officer. The granting of such permit shall be within the discretion of the health officer, taking into consideration the type of construction as it relates to sanitation and the manner in which animals, birds or fowl are to be housed, zoning regulations, and the character of the person making the application. (Prior code § 11.44.020: Ord. 540, 12/10/57; Ord. 1662, 12/14/71)

6.16.030 Permit—Application, fees, expiration and delinquency.

A. Applications. Applications for a permit to operate a kennel or a pet shop, or for renewal thereof, shall be filed with the health officer upon such forms as he may prescribe.

B. Fees. The permit fee for the calendar year or any part thereof during which the permitted activity is carried on and the fee for renewal thereof shall be that established by resolution of the board of supervisors.

C. Plan Check Charge. The applicant shall pay the plan check charge established by resolution of the board.

D. Expiration of Permits. Each permit shall expire on December 31st of the current year, provided such permit may be renewed without penalty on or before February 15th next following the expiration date.

E. Delinquent Permits. Permittees who do not renew the permit on or before February 15th shall pay the extra amount established by the board. (Prior code § 11.44.030: Ord.540,12/10/57; Ord.1662, 12/14/71)

6.16.040 Permit—Exceptions to fees.

The provisions of this chapter requiring the payment of an annual license fee shall not apply to an animal shelter maintained and operated by a society for the prevention of cruelty to animals duly incorporated under Title 1, Division 2, Part 4, of the Corporation Code of the state of California. (Prior code § 11.44.040: Ord. 540, 12/10/57)

6.16.050 Permit—Suspension or revocation.

Any permit issued under this chapter may be revoked or suspended if. after due investigation, the health officer finds that:

A. The permittee, his agent or employee has been convicted of any offense involving the violation of Section 597 of the Penal Code of the state or any provision of this chapter, or

B. The permittee, his agent or employee has, at the place for which the permit was issued, failed to provide any animal, fowl or reptile in his possession, care or control with proper and sufficient food, drink, shelter or protection, or subjected any such animal, fowl or reptile to needless suffering, unnecessary cruelty, or abuse; or

C. The permittee, his agent or employee, has failed to maintain the premises in a clean and sanitary condition; or

D. The permittee, his agent or employee, has violated any rule or regulation of the health officer. (Prior code § 11.44.050: Ord. 540. 12/10/57)

6.16.060 Permit—Notice of suspension or revocation.

The health officer may order an immediate suspension of any

permit granted under this chapter for a period of ten days; said order shall set forth the finding of the board. The health officer shall not revoke a permit granted under this chapter unless written notice of a hearing on such revocation is served upon the owner, occupant or other person in charge of the permittee's business, at least five days before the hearing by the health officer on the revocation of said permit. Where, after diligent search, such owner. occupant or person in control cannot be found, a copy of such notice shall be mailed to the permittee at said place of business at least five days before the hearing on the revocation of the permit. No person shall operate said business in the unincorporated limits of the county during any time in which the permit for such business has been suspended or revoked. (Prior code § 11.44.060: Ord. 540. 12/10/57)

6.16.070 Appeal—Procedure.

The owner or operator of any kennel or pet shop who shall be aggrieved by any action of the health officer may take an appeal to the board of supervisors. Notice of such appeal shall be in writing, and filed with the health officer and the board of supervisors on or before ten days after the action of the health officer appealed from, and shall state the grounds upon which said appeal is based. (Prior code § 11.44.070: Ord. 540. 12/10/57)

6.16.080 Appeal—Hearing—Notice.

A. Upon receipt of such notice of appeal, the board of supervisors shall hear the appeal within sixty days after such notice. Written notice of the time and place of hearing on the appeal shall be given by the clerk of the board of supervisors to the appellant and to the health officer, and upon receipt of said notice of hearing, the health officer shall forward to the board of supervisors all papers and records related to the appeal and relating to all proceedings had by the health officer in connection with appellant's case.

B. Upon the hearing of the appeal, the board of supervisors may take such aetion or make such order as said board of supervisors may deem just and proper in the disposition of said appeal. (Prior code § 11.44.080: Ord. 540, 12/10/57)

SANTA CRUZ COUNTY CODE, CHAPTER 8.30

NOISE

8.30.010 Curfew—Offensive noise.

A. No persons shall, between the hours of ten p.m. and eight a.m., make, cause, suffer, or permit to be made any offensive noise:

1. Which is made within one hundred feet of any building or place regularly used for sleeping purposes; or

2. Which disturbs any person of ordinary sensitivities within his or her place of residence.

B. "Offensive noise" means any noise which is loud, boisterous, irritating, penetrating, or unusual, or that is unreasonably distracting in any other manner such that it is likely to disturb people of ordinary sensitivities in the vicinity of such noise, and includes, but is not limited to, noise made by an individual alone or by a group of people engaged in any business, meeting, gathering, game, dance, or amusement, or by any appliance, contrivance, device, structure, construction, ride, machine, implement, instrument or vehicle. (Ord. 4001§1 (part), 1989)

8.30.020 Subsequent offense within forty-eight hours.

Any person who violates any section of this chapter and is cited for such a violation, and who within forty-eight hours after receiving such a citation again violates the same section, is guilty of a misdemeanor. A person is cited for a violation when he or she is issued and signs an infraction or misdemeanor citation, or when he or she is arrested and booked, or when a complaint is filed and the person is notified of the filing of such a complaint. (Ord. 4001 § 1 (part), 1989)

8.30.030 Exceptions.

A. The provisions of this chapter shall not apply to any noise from any specific type of activity for which special noise regulations are provided by any other provision of the county code.

B. The provisions of this chapter shall not apply to any noise caused by farming operations carried out on any land designated within the Santa Cruz County General Plan for commercial agricultural use. (Ord. 4001 § 1 (part), 1989)
4001 § 1 (part), 1989)

SANTA CRUZ COUNTY CODE, CHAPTER 13.10

13.10.250 INTERPRETATION

The Zoning Administrator shall be responsible for the interpretation of the provisions of this Chapter for their application to any specific case or situation, interpretation of whether a proposed use is essentially the same as a use allowed in the zone district, or interpretation of the boundary location of a zone district, based on the following guidelines, subject to appeal to the Board of Supervisors pursuant to Chapter 18.10:

(a) In interpreting and applying the provisions of this Chapter, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience, and general welfare.

13.10.285 RECORDING NOTICE OF VIOLATION

Whenever the Planning Department determines there has been a violation of this chapter, the Planning Department may provide a notice of intent to record a notice of code violation to the owner of the property upon which the violation is located.

Notice shall be provided by posting on the property and by mail at the address shown on the latest assessment roll or at any other address of the owner known to the Planning Department.

The notice shall state that within twenty (20) days of date of the notice, the owner may request a meeting with the Planning Department to present evidence that a violation does not exist.

In the event a meeting is not requested and the violation has not been corrected, or in the event that after consideration of the evidence the Planning Department determines that violation of this chapter in fact exists, the Planning department may record a Notice of Violation in the office of the County recorder.

Appeals to the determinations of the Section shall be processed in accordance with Section 18.10.320.

13.10.288 FEES

At the request of any affected property owner, the Planning Department shall issue a notice of expungement of violation upon satisfactory proof the violation noticed hereunder has been corrected.

The fee for checking, inspection, and verification of compliance and correction of any such violation, and recording of notice of expungement of such violation shall be set by resolution of the Board of Supervisors.

13.10.310 AGRICULTURAL DISTRICTS

13.10.311 PURPOSES.

(a) "CA" Commercial Agriculture.

The purposes of the "CA" Commercial Agriculture Zone District are to preserve the commercial agricultural lands within Santa Cruz County which are a limited and irreplaceable natural resource, to maintain the economic integrity of the economic farm units comprising the commercial agricultural areas of the County, to implement the agricultural preservation policy of Section 16.50.010 of the Santa Cruz County Code, and to maintain and enhance the general welfare of the county as a whole by preserving and protecting agriculture, one of the County's major industries. Within the "CA" Commercial Agriculture Zone District, commercial agriculture shall be encouraged to the exclusion of other land uses which may conflict with it. (Ord. 2622, 1/23/79; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(b) "A" Agriculture.

The purposes of the "A" Agriculture Zone District are to encourage and provide for noncommercial agricultural uses, such as family farming and animal raising, and to allow limited commercial agricultural activities, on the small amounts of agricultural land remaining in the County which are not designated as commercially suitable, but which still constitute a productive natural resource; to provide for agricultural uses of a higher intensity in rural areas than those allowed in the "RA" Residential Agricultural Zone District where such use is compatible with the surrounding land uses and the environmental constraints of the land; to maintain options for a

diversity of farm operations; to implement the agricultural preservation policy of Section 16.50 of the County Code; and to maintain productive open space and rural character in the county. (Ord. 1639, 9/21/71; 2450, 6/21/77; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(c) "AP Agricultural Preserve.

The purposes of the "CA" Zone District shall apply to the "AP" Agricultural Preserve Zone District. The "AP" regulations are designated to apply only to lands located within an agricultural preserve established in accordance with the provisions of the California Land Conservation Act of 1965 as now enacted or as hereafter amended, and which are within the "AP" Zone District as of July 27, 1982. (Ord. 1283, 1/2/68; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

13.10.311(d) Interpretation of Provisions.

The provisions of this Chapter shall be liberally interpreted insofar as they apply to agricultural pursuits and services and shall not be deemed or construed to interfere with any normal accessory use conducted in conjunction therewith. It is the intention of the county to retain for commercial agricultural production, and to encourage the commercial agricultural use of, lands designated by the Board of Supervisors as Type 1, Type 2, or Type 3 Agricultural Lands on the map entitled "Agricultural Resources" on file with the Planning Department; to provide maximum protection to existing and future agricultural enterprises from restrictions which may be instituted later at the request of future residents; to restrict incompatible development on or adjacent to agricultural land; and to maintain the existing parcel sizes for parcels zoned "CA" and "AP", except where it is clearly demonstrated that any division of such parcels shall not diminish the productivity or in any way hamper or discourage longterm commercial agricultural operations on said parcels or adjoining or nearby parcels.

13.10.312 AGRICULTURAL USES

13.10.312(b) Allowed Uses.

The uses allowed in the agricultural districts shall be as

provided in the Agricultural Uses Chart below. A discretionary approval for an allowed use is known as a "Use Approval" and is given as part of a "Development Permit" for a particular use. The type of permit processing review, or "Approval Level", required for each use in each of the agricultural zone districts is indicated in the chart. The processing procedures for Development Permits and for the various Approval Levels are detailed in Chapter 18.10 PERMIT AND APPROVAL PROCEDURES. The Approval Levels given in this chart for structures incorporate the Approval Levels necessary for processing a building permit for the structure. Higher Approval Levels than those listed in this chart for a particular use may be required if a project requires other concurrent Approvals, according to Section 18.10.123. All Level V or higher Approvals in the "CA" and "AP" zone districts are subject to the special findings required by Section 13.10.314(a) in addition to those required in Section 18.10.230. (Ord. 3632, 3/26/85)

AGRICULTURAL USES CHART:

Key:
A = Use must be ancillary and incidental to a principal permitted use on the site
P = Principal permitted use (see Sec. 13.10.312(a)); no use approval necessary if "P" appears alone

1 = Approval Level I (administrative, no plans required)
2 = Approval Level II (administrative, no plans required)
3 = Approval Level III (administrative, field visit required)
4 = Approval Level IV (administrative, public notice required)
5 = Approval Level V (public hearing by Planning Commission required)
6 = Approval Level VI (public hearing by Zoning Administrator required)
7 = Approval Level VII (public hearing by Planning Commission and Board of Supervisors required)
- = Use not allowed in this zone district
* =
Level IV for projects of less than 2000 square feet;
Level V for projects of 2000 ro 20,000 square feet;
Level VI for projects over
BP= Building Permit Only

AGRICULTURAL USE CHART

USE	CA	A	AP
Livestock raising for food, fiber or animal production, including rabbits and other small animals under 100 per acre.	P	P	P
Kennels, commercial or private, for five or more dogs or cats over the age of four months subject to the provisions of 13.10.323	5	5	5

13.10.322 RESIDENTIAL USES

13.10.321 PURPOSES OF RESIDENTIAL DISTRICTS.

(a) General Purposes.

In addition to the general objectives of this Chapter (13.10.120) the residential districts are included in the Zoning Ordinance in order to achieve the following purposes:

1. To provide areas of residential use in locations and at densities consistent with the County General Plan.

2. To preserve areas for primarily residential uses in locations protected from the incompatible effects of nonresidential land uses.

3. To establish a variety of residential land use categories and dwelling unit densities which provide a choice of diversified housing opportunities consistent with public health and safety.

4. To achieve patterns of residential settlement that are compatible with the physical limitations of the land and the natural resources of the County and that do not impair the natural environment.

5. To ensure adequate light, air, privacy, solar access, and open space for each dwelling unit.

6. To maximize efficient energy use and energy conservation in residential districts, and to encourage the use of locally available renewable energy resources.

7. To provide adequate space for off-street parking of automobiles.

8. To provide areas of residential use consistent with the capacity of public services, the Urban Services Line and Urban/Rural Boundary and the reserve capacity policy of the Local Coastal Program Land Use Plan for tourist services. To minimize traffic congestion and avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the land around them.

9. To protect residential properties from nuisances, such as noise, vibration, illumination, glare, heat, unsightliness, odors, dust, dirt, smoke, traffic congestion, and hazards such as fire, explosion, or noxious fumes. (Ord. 560, 7/14/58; 1092, 6/8/65; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83; 3501, 3/6/84)

(b) Specific "RA" Residential Agricultural District Purposes.

To provide areas of residential use where development is limited to a range of nonurban densities of single-family dwellings in areas outside the Urban Services Line, or-in Suburban/Urban Reserve areas inside the Urban Services Line; on lands suitable for development with adequate water, septic system suitability, vehicular access, and fire protection; with adequate protection of natural resources; with adequate protection from natural hazards; and where small-scale commercial agriculture, such as animal-keeping, truck farming and specialty crops, can take place in conjunction with the primary use of the property as residential. (Ord. 560, 7/14/78; 839, 11/28/62; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(c) Specific "RR" Rural Residential District Purposes.

To provide areas of residential use where development is limited to a range of nonurban densities of single-family dwellings in areas having services similar to "RA" areas, but which are residential in character rather than agricultural due to the pattern of development and use in the area and/or the presence of constraints which would preclude the use of the

property for agriculture. (Ord. 653, 10/17/60; 3186, 1/12/82; 3344, 11/23/82 3432, 8/23/83)

(d) Specific "R-1" Single-Family Residential District Purposes.

To provide for areas of predominantly single-family residential development in areas which are currently developed to an urban density or which are inside the Urban Services Line or Urban/Rural Boundary and have a full range of urban services, or in Suburban/Urban Reserve areas at lower densities pending a full range of urban services. (Ord. 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(e) Specific "RB" Single-Family Ocean Beach Residential District Purposes.

To accommodate single family dwellings on existing lots of record in the vicinity of the cliffs and the ocean beach; where lots abut on and obtain access from a street which is generally parallel to both the beach and the cliff, and which has an elevation of not more than 20 feet above sea level; and where either the seaward right-of-way line of the street or the seaward boundary line of the lots on the ocean side of the street abut open beachlands which are unobstructed to the mean high tide line. (Ord. 1418,

5/25/69; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(f) Specific "RM" Multi-family Residential District Purposes.

To provide for areas of residential use with a variety of types of dwellings in areas which are currently developed to an urban density or which are inside the Urban Services Line or Urban/Rural Boundary and have a full range of urban services. (Ord. 839, 11/28/62; 1891, 6/19/73; 3186, 1/12/82; 3432, 8/23/83)

13.10.322 RESIDENTIAL USES.

(a) Principal Permitted Uses.

1. In the Coastal Zone, the principal permitted uses in the residential districts shall be as follows:

"RA" : single-family residential and agricultural

(rural)

"RR" : single-family residential (rural)

"R-1": single-family residential (urban)

"RB" : single-family residential (oceanfront, urban)

"RM": multiple-family residential (urban) including appurtenant accessory uses and structures

2. Principal permitted uses are all denoted uses requiring a Level IV or lower Approval or as otherwise denoted with the letter "P" in the footnotes to the Residential Uses Chart in paragraph (b) following. In the Coastal Zone, actions to approve other than permitted uses are appealable to the Coastal Commission in accordance with the provisions of Chapter 13.20 of the County Code relating to Coastal Zone Permits, and in some cases, as provided in Chapter 13.20, any development is appealable.

(b) Allowed Uses. The uses allowed in the residential districts shall be as provided in the following Residential Uses Chart below. A discretionary approval for an allowed use is known as a "Use Approval" and is given as part of a "Development Permit: for a particular use. The type of permit processing review, or "Approval Level", required for each use in each of the residential zone districts is indicated in the chart. The processing procedures for Development Permits and for the various Approval Levels are detailed in Chapter 18.10 PERMIT AND APPROVAL PROCEDURES. The Approval Levels given in this chart for structures incorporate the Approval Levels necessary for processing a building permit for the structure. Higher Approval Levels than those listed in this chart for a particular use may be required if a project requires other concurrent Approvals, according to Section 18.10.123.

RESIDENTIAL USES CHART:

Key:
A = Use must be ancillary and incidental to a principal permitted use on the site
P = Principal permitted use (see Sec. 13.10.312(a)); no use approval necessary if "P" appears alone

1 = Approval Level I (administrative, no plans required)
2 = Approval Level II (administrative, no plans required)
3 = Approval Level III (administrative, field visit required)
4 = Approval Level IV (administrative, public notice required)
5 = Approval Level V (public hearing by Planning Commission required)
6 = Approval Level VI (public hearing by Zoning Administrator required)
7 = Approval Level VII (public hearing by Planning Commission and Board of Supervisors required)
- = Use not allowed in this zone district
* =
Level IV for projects of less than 2000 square feet;
Level V for projects of 2000 ro 20,000 square feet;
Level VI for projects over
BP= Building Permit Only

RESIDENTIAL USES CHART

USE	RA	RR	R-1	RB	RM
Agricultural uses, including					
Agriculture, small-scale commercial, such as the raising of specialty crops (see also Animal-Keeping)	P	--	--	--	--
Animal-related uses, including:					
Animal-keeping (subject to Section 13.10.643) (see also "Animal enclosures" above)	P	--	--	--	--
Cats and dogs	P:4 cats or dogs or combo	P:4 cats or dogs or combo	P:2 cats and 2 dogs per unit	P:2 cats and 1 dog per unit	P:2 cats and 1 dog per unit
Kennels for five or more	5	--	--	--	--

dogs or cats over the age of four months (subject to Section 13.10.642)					
Bee-keeping, commercial (see Section 13.10.700-B definition)	5	--	--	--	--

13.10.643 ANIMAL-KEEPING IN THE RESIDENTIAL-AGRICULTURAL ZONE DISTRICT

(a) The following minimum acreage standards are required when keeping animals in the Residential-Agricultural Zone District:

1. On a minimum site of one acre, not more than two per acre of horses, cows, or hogs, or a combination hereof; or

2. On a minimum site of one-half acre, not more than four per acre of sheep, goats, or a combination thereof; or one hundred per acre of fowl, rabbits, or similar small animals except mink; beehives;

3. On a minimum site of ten acres, the number of animals permitted is not limited, except that no more than six brood sows may be kept on any site.

(b) The provisions of Section 16.22.060, pertaining to erosion control, shall apply. (Ord. 1891, 6/19/73; 3186, 1/12/82; 3344, 11/23/82; 3432, 8/23/83)

(c) For purposes of interpretation, a cow, llama, pig, or other large animal may equal a horse.

13.10.700 DEFINITIONS.

For the purposes of this Chapter certain terms used herein are defined as follows:

(a) All words in the present tense shall include the future tense. All words in the singular number shall include the plural number and all words in the plural number shall include the singular number, unless the natural construction of the wording indicates

otherwise. The word "shall" is mandatory and not directory.

(b) All terms used in this chapter shall be as defined in the General Plan, including the Local Coastal Program Land Use Plan glossaries, except as noted below.

13.10.700-A "A" DEFINITIONS.

Agriculture. The art or science of cultivating the ground, including the harvesting of crops and the rearing and management of livestock; tillage; husbandry; farming; horticulture.

13.10.700-K "K" DEFINITIONS

Kennel. Any lot, building structure, enclosure, premises whereupon or wherein are kept five or more dogs, cats or similar small animals over the age of four months in any combination for more than five days, whether such keeping is for pleasure, profit, breeding, or exhibiting and including places where dogs and cats or similar small animals in any combination are boarded, kept for sale or kept for hire.

Appendix H

CALIFORNIA ATTORNEY GENERAL'S OPINIONS

Opinion No. CR 76-23 -- February, 1977
60 Ops. Cal. Atty. Gen. 83

SUBJECT: LOCAL BUILDING CODE ORDINANCE-STATE HOUSING LAW

Opinion by: Evelle J. Younger, Attorney General
Steven H. Kaufmann, Deputy

At p. 90 (in part):

It does not seem reasonable that the Legislature in enacting Goverment Code section 25132 in 1975 intended thereby to make violation of every outstanding and future county ordinance in California a criminal offense, regardless of the purpose of the ordinance or the intent of the board of supervisors adopting the ordinance. Accordingly, upon reason and authority, we conclude that Government Code sections 25132 and 36900 make the violation of a city or county ordinance either a misdemeanor or an infraction only when the violation is declared to be a misdemeanor or infraction by express ordinance language. In the absence of such criminal penalties violations of a city or county ordinance may be enforced by means of an appropriate civil remedy. *Matter of Ellsworth*, 165 Cal. 677, 681 (1913); *City of Stockton v. Frisbie & Latta, supra*, 93 Cal. App. 277, 295.

Opinion No. 80-607 -- December 23, 1980
63 Ops. Cal. Atty. Gen. 905

SUBJECT: RECORDING OF DOCUMENTS BY BOARD OF SUPERVISORS OF GENERAL LAW COUNTY

Opinion by: George Deukmejian, Attorney General
Victor D. Sonenberg, Deputy

At p. 912:

Consequently a general law county may provide for the recording of those documents which are not expressly specified or included in any of the state recording statutes[4], unless, of course, the recording of such documents would violate some

other state statute such as one that requires confidentiality of the documents in question. (See, e.g., Welf. & Inst. Code § 10810 making welfare recipients records confidential.) As noted, local law which duplicates or contradicts state law is in conflict with such law and is thus void.

At p. 912, n. 4:

We are informed by the requester of this opinion that the county as a means of enforcement is desirous or recording notices of violations of various building, health, subdivision, and zoning laws which have been found to exist by the county inspectors. In this regard we would note that such notices reflect what are merely charges of violations and under no rule of law do they operate to encumber title to or any right of possession of property. Such notices would thus not be an "instrument or judgment affecting the title to or possession of real property" as specified in section 27280. This conclusion is supported by the reasoning in *Brown v. Johnson* (1979) 98 Cal. App. 3d 844, where the court held that a notice of a vendor's lien on real property was not an instrument affecting property that could be recorded under section 27280(d). In that case, the court stated:

> "'Such lien ... is not a specific absolute charge upon the property, but only an equitable right of the vendor to resort to in case the purchase money is not paid ...' A vendor's lien is a mere personal privilege to resort to land as a means of enforcing a land sale contract. [Citation] The right to resort to a vendor's lien must be established by suit; the lien is of no operative force or effect until established by decree of court and may be asserted only by a suit in equity for the purpose of obtaining such a decree. [Citation]
>
> "... The notice thus did not create the lien nor did it affect the title or possession of the property. The notice was therefore not authorized to be recorded ..." (*id* at pp. 850-851); see also *Dreifus v. Marx* (1940) 40 cal. App. 2d 461, 466; writ of attachment not included under recording statute.)

It would appear that a notice of violation of building laws, etc., which may or may not result in a court order, which itself would not necessarily affect title or possession, is an instrument that has an even more remote effect upon title or

possesion than a notice of a vendor's lien, and would thus not be covered by section 27280(a).

In addition to our conclusion that notices of violation are not included in the general provisions of 27280(a), we also assume in view of the question asked in the opinion request, that the proposed ordinance would not provide for the recording of these types of documents that are already specifically designated under particular state statutes. For example, see section 66499.36 which provides for the recording of a notice of violation of subdivision laws.